**2020 Guide to Regulatory Development and RIAS Writing**

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# Purpose

The purpose of this guide is to outline for departments[[1]](#footnote-1), the steps to be undertaken, and documents needed, to develop a federal regulatory proposal in compliance with the *Cabinet Directive on Regulation* (the Directive) and the Policy on Regulatory Development.

This guide replaces the following policies and guides from the Cabinet Directive on Regulatory Management (CDRM):

* Guide to the Federal Regulatory Development Process
* RIAS Writer’s Guide 2009
* Assessing, Selecting, and Implementing Instruments for Government Action
* Guidelines for Effective Regulatory Consultations
* Guidelines on International Regulatory Obligations and Cooperation

Links to other relevant policies, guides and resources are available at the Treasury Board of Canada Secretariat (TBS), Regulatory Affairs Sector [(RAS) website](https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools.html).

# The Triage

The Triage Statement (Triage) is an initial assessment of a regulatory proposal to determine its level of impact, the analytical lenses to be applied, and associated analysis required for the Regulatory Impact Analysis Statement (RIAS).

Departments are encouraged to engage their RAS analyst at the beginning of the triage process. The RAS analyst will provide comments within 10 business days of receipt of a completed Triage unless a different timeline is mutually agreed upon. It is not necessary to have all of the required analysis completed at the triage stage, as long as the Triage clearly indicates which lenses are to be applied and the outstanding work that will be required to complete them. This additional analysis will be included in the RIAS.

Once completed and approved, the Triage will be signed by the RAS analyst and the responsible director from the department. It may take several rounds of comments and responses before RAS signs off on a triage.

The security classification of the Triage should be determined by the department, based on the information contained in the Triage. The document should not be password protected.

The following sections provides guidance to departments on how to complete a Triage.

##  Part 1: Overview (sections A-D)

This section provides the basic information on the regulatory proposal, starting with the sponsoring department, title of the proposal, the statutory authority (i.e., the applicable Act and sections that provide the authority to regulate), the targeted Treasury Board meeting, and any other decisions required (e.g., Cabinet, TB Part A, etc). The details of the decisions previously made will be further outlined in section P of the Triage, “Other Considerations”.

### Pre-publication period

The pre-publication period will be determined in consultation with your RAS analyst at the triage stage. However, approval of the pre-publication period, or exemption from pre-publication, is ultimately made by Treasury Board ministers, with the advice of TBS RAS.

See section 9.3.1 for more information on determining an appropriate pre-publication period, including requirements under international obligation, and when exemption from pre-publication may be appropriate.

### Section A – Background

This section should provide a brief summary relevant historical information to help explain the facts and context supporting the proposed regulatory change. More information on the Background is in section [3.3.4](#_Background_(if_needed)) of this guide.

### Section B - Issues

The issues statement should be concise and allow the RAS analyst to understand the specific problem to be solved by the regulatory proposal. More information on how to define the Issues can be found in section [3.3.3](#_Issue) of this guide

### Section C - Description

This section describes the proposed regulatory action in clear and plain language; whom the proposed regulation would apply to; and what will be required of each stakeholder. More information on the Description is in section [3.3.6](#_Description) of this guide

### Section D - Objectives and Benefits

This section should provide a qualitative description of the intended outcomes and benefits. Any known quantitative benefits can also be included here.

## Part 2: Consultation, coordination and communication (sections E-H)

This section of the Triage covers the following:

* impacted stakeholders, and any other interested parties, and any consultations that have taken place, or that are planned;
* whether the proposal is listed on the departmental Forward Regulatory Plan, and when it was added. If not, explain why;
* whether the proposal impacts the mandate of another Minister or department, whether or not that department has been engaged, and its position; and
* whether the proposal is expected to garner public or media attention and how is it expected to be received. Include preliminary information on the communications strategy.

## Part 3: Analytical Requirements (sections I-P)

This part of the Triage is to help establish what analysis and considerations are required to be included in the RIAS. It is not necessary to have all of the analysis completed at the Triage stage. Departments should have conducted a preliminary assessment, sufficient to identify which of the analytical lenses are triggered.

Section I relates to the expected costs of the proposal. A preliminary estimate of the gross costs, either annually or over a 10-year period should be provided. There is no need to discount, or set a price year as this estimate is only used to determine the requirements for cost-benefit analysis (CBA). There are three categories for a CBA, No Cost, Low Cost ($1M per year or less, or less than $10M over 10 years), and Significant Cost (over $1M per year or more than $10M over 10 years).

The [Policy on Cost-Benefit Analysis](https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/policy-cost-benefit-analysis.html) provides additional information on the analytical and RIAS requirements for each category.

The following sections of the Triage help identify what analysis is required:

* J – Gender-based analysis plus (GBA+);
* K - Strategic environmental assessment;
* L - Modern treaty obligations, and Indigenous engagement and consultation;
* M - One-for-one rule;
* N - Small business lens;
* O - Regulatory cooperation and alignment; and
* P - Other considerations.

Departments should provide answers to the questions in each section and identify any additional analysis to be done in that particular area. The Triage contains links to additional information on the requirements for each section. See section [3.3.8](#_Regulatory_Analysis) of this guide for additional information on regulatory analysis.

## Part 4: Summary of Analytical Requirements

This section of the Triage is to be completed by the RAS analyst, outlining the analytical requirements for the RIAS, in addition to any other information required for the submission. Once the RAS analyst has finished their review, the Triage will be signed by the responsible director at the department and the RAS analyst, indicating agreement on the analytical and other requirements for the submission. The triage can be sent electronically, using either e-signatures, or signing and scanning.

# The Regulatory Impact Analysis Statement (RIAS)

## The RIAS and the requirements in the Cabinet Directive on Regulation

Once a Triage is completed, the department should begin the development of a RIAS, which must accompany each proposed and final regulation published in the [*Canada Gazette*](http://www.gazette.gc.ca/gazette/home-accueil-eng.php).

A RIAS provides a non-technical synthesis of information that allows various audiences to understand the reason for the regulation, the Government’s objective, and analysis to support the proposed approach, including the costs, benefits and other socio-economic impacts. It also identifies who will be affected by the regulatory proposal, and who was consulted in developing the regulation. The RIAS is also used to demonstrate that the analytical requirements of the Cabinet Directive on Regulation, and related policies, have been met.

Section 7 of the [Policy on Regulatory Development](https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/policy-regulatory-development.html) outlines the requirements and overall expectations for the development and analysis of a regulatory proposal. This section of the guide builds on those requirements and sets out information in the same format as the RIAS.

The RIAS is submitted to RAS for review in order to ensure that it meets all of the requirements of the directive. A RAS analyst will send comments back to the department within 10 business days of receipt of a draft RIAS unless a different timeline is mutually agreed upon. The document should not be password protected.

Ministerial approval of the regulatory submission, including the RIAS, should not be sought until the RAS analyst has completed the review of the RIAS and has provided confirmation in writing that it meets the requirements of the Cabinet Directive. Ultimate accountability for a RIAS rests with the responsible minister.

## RIAS writing style

The following are some guidelines to apply in drafting a RIAS:

* use plain language;
* avoid long, complicated sentences and paragraphs, technical terms, jargon, or unfamiliar acronyms;
* be concise and stick to the key points;
* build arguments step by step, based on facts and evidence;
* use the conditional verb tense (“the proposed regulations would”) for a RIAS that is prepared for pre-publication in the Canada Gazette, Part I. Use the present or future verb tense (“the regulations require…” or “the regulations will”) for final publication in the Canada Gazette, Part II; and
* avoid repeating the same information in different sections of the RIAS;

## RIAS Template

The RIAS template is available on [GCPedia](http://www.gcpedia.gc.ca/wiki/Cabinet_Directive_on_Regulation).

The RIAS comprises a cover page containing the responsible Minister’s signature and the following sections

1. Executive summary (if applicable)
2. Issues
3. Background
4. Objective
5. Description
6. Regulatory development
	1. Consultation
		1. Pre-publication in *Canada Gazette*, Part I
	2. Modern treaty obligations and Indigenous engagement and consultation
	3. Instrument choice (if applicable)
7. Regulatory analysis
	1. Benefits and costs
		1. Cost-benefit statement
	2. Small business lens
	3. One-for-one rule
	4. Regulatory cooperation and alignment
	5. Strategic environmental assessment
	6. Gender-based analysis plus
	7. Rationale (if needed)
8. Implementation, compliance and enforcement, and service standards
	1. Implementation
	2. Compliance and enforcement (if applicable)
	3. Service standards (if applicable)
9. Contact

### RIAS Cover Page

A cover page is required for every RIAS, regardless of the impact of the regulation. The RIAS cover page provides the title of the regulatory proposal, the statutory authority, along with the title and signature of the responsible Minister.

For proposals containing a request for exemption from pre-publication in the *Canada Gazette*,Part I, the cover page must provide the justification for the exemption.

### Executive summary

An **executive summary** is recommended for a longer RIAS (e.g., over 10 pages) and appears in a text box at the beginning of a RIAS. It should be no more than two pages (e.g., 60 lines long or 1,000 words) and should cover the following topics:

* **Issue:** A brief statement to describe the issue and why government intervention through regulation is needed;
* **Description:** A brief description of the proposed regulation;
* **Rationale:** A clear and concise justification of the proposed regulation, including a high-level summary of regulatory development (e.g., relevant consultations or stakeholder positions) and regulatory analysis (e.g., cost-benefit analysis, socio-economic impact, and regulatory cooperation).

### Issues

This section is mandatory in every RIAS. The issue exposes the policy problem, explains why the current situation cannot continue, and why regulatory modifications are necessary. The issue statement should be clear and concise and provide a concrete problem to be solved.

It may be necessary to describe the baseline scenario (i.e., what happens without regulations), however, this should be limited to a summary of why the existing situation is problematic, as detailed information on the baseline will be part of the Instrument Choice section.

The issue section should not describe the proposed regulatory changes.

### Background (if needed)

This section is used to provide historical context on the problem, including actions that have been taken in the past, and a description of events that have led up to the need for regulatory intervention. The drivers or underlying causes of the issue/problem, and groups likely to be most affected, can be identified in the background. This section of the RIAS should provide a sense of the nature and magnitude of the problem and identify what government actions (if any) have been taken in the past to address it.

This section is required for significant impact proposals. For no-cost or low-cost proposals, the background is only required if additional information is needed to provide context for the proposal. Given the vast range of proposals, there are no set rules to determine whether a no-cost or low-cost proposal requires a background section.

### Objective

This section is mandatory in every RIAS. This section should state the intent of the proposed regulatory action in concrete terms and situate it within the broader policy context. This involves articulating policy goals and desired outcomes. There may be several policy goals, each with a variety of outcomes. While policy goals and outcomes are strongly related, they are not the same. For example, a goal might be to make a particular activity safer, while the desired outcome might be a 30% reduction in the rate of injury.

The objectives should be specific enough to be measurable (if you were to develop performance indicators it would be based on the stated objectives) and should be realistic and transparent.

It should also explain how the proposed regulation fits into the department’s policy framework.

### Description

This section is mandatory in every RIAS. This section describes the proposed regulatory action in clear and plain language to help the reader understand the proposed regulation. It also indicates to whom the regulation applies, and what will be required.

Since the proposed regulation is published in the *Canada Gazette*, it is not advised to cut and paste the regulatory text into the RIAS. The information in the RIAS should avoid references to section numbers, unless accompanied by appropriate context.

For complex regulatory amendments, consider using sub-headings to guide readers to each section. Sub-headings can group ideas, or stakeholder groups, and do not necessarily have to reflect the structure of the regulations.

This section should not provide analysis or justification on why changes are being made. This will be done in the Regulatory Analysis section. It should not set out the history of the legislation or regulation, this can be done in the Background, if necessary.

Tip: Try thinking about how the regulation could be described to a person who is only marginally aware of the issue.

###### The link between the Issue, Objective and Description

One way to ensure that the issue and objectives have been adequately addressed is to compare them to the proposed regulatory changes (i.e., the description).

While generally the problem should be identified before the solution, it can sometimes be easier to take the proposed regulations and work backward using a table to ensure that the issue and objective of each proposed change has been included in the RIAS. This tool can be used to ensure that your issue and objectives are accurately presented for the proposed changes to the regulations.

The following is a fictional example:

|  |  |  |
| --- | --- | --- |
| **Issue** | **Objectives** | **Description** |
| Every year, 1,000 Canadians die from poorly made widgets. | Reduce fatalities from widgets by 50% | Require that all widgets be manufactured to the International Widget Standard |
|  |  |  |
|  |  |  |

### Regulatory development

#### Consultation

This section is mandatory in every RIAS. This section should provide a summary of the consultation process, and the comments received, and how they were taken into consideration in the development of the policy and regulations. If no consultations have been done, explain why.

Providing Canadians a full opportunity to be consulted and to participate in the regulatory process is a cornerstone of the directive. The public is to be encouraged to challenge ineffective or inefficient regulation and to offer suggestions for better ways to solve problems and meet social and economic objectives.

In summary, this section should address the following:

* Report on the early stakeholder engagement;
* Indicate who was consulted;
* Indicate what consultation mechanisms were used;
* Indicate when and for how long the consultations were conducted;
* Discuss results of the consultations and whether the regulation changed as a result;
* Provide a summary of stakeholder positions, including an indication of any opposition to the regulation; and
* Provide a rationale as to why the regulation might not respond to stakeholders’ views or concerns.

Where service fees/charges are part of the proposal, this section should outline the consultations done regarding the fees/charges as well. See [Directive on Charging and Special Financial Authorities](https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32502) for more information.

As is the case with other issues addressed in the RIAS, the extent of consultations undertaken should be influenced by the significance and anticipated impact of the proposed regulation. This, in turn, will be reflected in the length of the “Consultation” section. The RIAS does not need to contain an outline of all comments received nor an answer to each issue or concern raised. However, major themes may be used along with how the department has responded to the comments on these themes. Departments that wish to provide detailed descriptions of their consultations should do so in a separate document and provide a Web link or departmental contact for information in the RIAS.

The RIAS should demonstrate that the consultation process was balanced and not unduly influenced by the views of one particular group. Also, when consultations were undertaken to gather data, it should be clear that data-collection methods were appropriate and that the robustness of results was validated.

Avoid duplicating consultation activities between this section and other sections in Regulatory Analysis, such as the one-for-one rule, small business lens, and regulatory cooperation. Should the consultation summary be best placed in this section, refer back to the Consultation section in later parts of the RIAS. Alternatively, do not ignore consultation activities if the explanation is better placed in the relevant analysis section. Indicate to readers that additional consultation activates are described further in the document.

For example, this section should highlight regulatory cooperation activities that have taken place or cooperation efforts that have been undertaken with other provinces or orders of government in Canada, the United States and internationally, as per the requirement on how to consider regulatory cooperation in early consultations from the Policy on Regulatory Development. However, the section should not go into too much detail on why there are differences, as this will be covered in later sections.

Where exemption from pre-publication has been granted, explain the rationale for the exemption.

##### Pre-publication in Canada Gazette, Part I

Pre-publication is not a replacement for consultation. The groups that are most affected by the regulation should have been consulted before pre-publication.

Following pre-publication, the consultation section of the RIAS should be updated with the results of the pre-publication. Departments should use the following as an introduction to the pre-publication summary:

“The proposed Regulations were published in the *Canada Gazette*, Part I on [Date], followed by a XX day comment period. YY submissions were received.”

A summary of the comments received should outlined in this section, along with how the department has responded to those comments. Departments should also indicate where changes have been made to the proposed regulations in response to comments. Changes may also be required in other sections due to comments from pre-publication.

If social media is used to inform the public of proposed regulations, it may be appropriate to summarize the feedback received on social media, even though comments have not been submitted formally as per the notice in the *Canada Gazette*.

Note that, in some cases, comments received as a result of pre-publication may alert regulators to considerations that did not initially factor into the cost-benefit analysis for the proposed regulatory measure. This may result in a substantial change to the regulatory proposal. In these circumstances, it may be necessary to pre-publish for a second time before proceeding to the *Canada Gazette*, Part II. Please discuss with your RAS analyst, and the Department of Justice to determine if the changes would warrant a second pre-publication.

Generally speaking, if a regulation has been pre-published and is not brought back for final approval within 18-months of the end of the pre-publication period, the department may be required to pre-publish the proposal again. This should be discussed with your RAS analyst, as there are cases where flexibility may be provided, such as when there has been on-going engagement with stakeholders to address comments.

#### Modern treaty obligations and Indigenous engagement and consultation

The Government of Canada has signaled its commitment to a renewed nation-to-nation relationship between Canada and Indigenous peoples, one based on the recognition of rights, respect, trust, co-operation, and partnership. Meaningful consultation and engagement with Indigenous groups is one mechanism for building enduring, trust-based relationships and partnerships.

Consultations may be required to fulfill legal obligations or for good governance/policy reasons.

A legal obligation to consult may originate from:

1. The common law duty to consult (generally referred to as the “duty to consult”)

The duty to consult and, where appropriate accommodate, is based on judicial interpretations of the obligations of the Crown when it considers conduct that might adversely impact potential or established Aboriginal or treaty rights, which are recognized and affirmed in section 35 of the *Constitution Act, 1982*. For additional information, please refer to Crown-Indigenous Relations and Northern Affairs Canada’s guidance on the [Duty to Consult](https://www.aadnc-aandc.gc.ca/eng/1331832510888/1331832636303). Specific questions can be sent to the following address: aadnc.cau-uca.aandc@canada.ca.

1. Consultation obligations found in modern treaties (e.g., land claim and self-government agreements), [consultation protocols](https://www.aadnc-aandc.gc.ca/eng/1331832510888/1331832636303) (, or other commitments (e.g., terms of settlements)

The [Cabinet Directive on the Federal Approach to Modern Treaty Implementation](https://www.aadnc-aandc.gc.ca/eng/1436450503766/1436450578774) advances a whole of government approach to modern treaty implementation and lays out an operational framework for the management of the Crown's modern treaty obligations. It guides federal departments to fulfill their responsibilities. One of the requirements is for departments to conduct an [Assessment of Modern Treaty Implications](http://www.gcpedia.gc.ca/wiki/Assessment_of_Modern_Treaty_Implications_%28AMTI%29). Where implications are identified, departments are responsible for consulting with Modern Treaty partners and ensuring that the development of the regulatory proposal respects the rights and obligations contained in modern treaties and self-government agreements to discuss implications for federal activities.

An assessment template and guide are available to assist analysts with the assessment and to identify any implications. Contact your departmental subject matter expert or go to: [http://www.gcpedia.gc.ca/wiki/Assessment\_of\_Modern\_Treaty\_Implications\_(AMTI)\_/\_Tools](http://www.gcpedia.gc.ca/wiki/Assessment_of_Modern_Treaty_Implications_%28AMTI%29_/_Tools).

The Modern Treaty Implementation Office, Crown-Indigenous Relations and Northern Affairs Canada provides assistance to analysts completing assessments. You can contact the Office at aadnc.bmtm-ertm-mtio-amti.aandc@canada.ca.

Please note that where there are modern treaty implications, the Government of Canada should not rely on publication in the *Canada Gazette* to inform modern treaty partners of these implications. Departments are responsible for proactively engaging with modern treaty partners.

1. In some cases, there are statutory obligations to consult (e.g., environmental assessment legislation)

In the absence of a legal obligation to consult, good governance/policy consultations should be done to notify, provide information to and seek input from an Indigenous group about a contemplated regulatory activity that could impact the group’s interests.

Further, the Government of Canada has committed to adopting the United Nations Declaration on the Rights of Indigenous Peoples, and has announced [Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples](http://www.justice.gc.ca/eng/csj-sjc/principles-principes.html). In doing so, the right of Indigenous peoples to participate in decision-making in matters that affect their rights, through their own representative institutions, should be respected.

#### Instrument choice (if applicable)

This section describes the range of regulatory and non-regulatory options considered in addressing the issue or risk identified, including the proposed regulatory action and the key differences between the options. Not every option considered in developing the regulatory proposal needs to be presented—just the real or viable options.

The regulatory development process involves an exercise to determine if regulation is the most appropriate way to achieve the desired outcome. Regulators should ensure that they have considered non-regulatory measures, in consultation with stakeholders, before deciding to regulate.

The RIAS will report on all legitimate options that were viewed as having the potential to be efficient or cost-effective. The selection of alternatives may have been based on a preliminary analysis of their characteristics or on the prior experience of other jurisdictions that have employed such options.

This section should include both alternatives to regulation (such as voluntary standards) and alternative types or forms of regulation (including market instruments, such as tradable emission rights) that have been analyzed. There can be many reasons for choosing or disqualifying alternatives, such as cost or feasibility. In all cases, list the most viable alternatives and offer a brief explanation of why these alternatives were not selected. Treating each alternative in a separate paragraph adds clarity. Where a mix of regulatory and non-regulatory options have been selected, they should be explained together to demonstrate how they achieve the outcome.

When there are multiple options or alternatives, a “best practice” is to identify which option is the preferred or recommended one by using sub-headings or parentheses.

##### Incorporation by Reference

Where the proposal uses incorporation by reference, explain why it is being used, how the material can be accessed, and how the incorporated material (i.e., the document or standard) was developed. If applicable, regulators are also required to provide a rationale as to why they are using a unilingual standard/reference, or if the standard/reference is solely available at a cost. See section 7.1.4 of the Policy on Regulatory Development for more information.

### Regulatory analysis

This section is mandatory in every RIAS. This section provides an opportunity to demonstrate why the selected option has been chosen, and should include any other analysis, impacts, or justifications.

All analysis should be grouped under this heading. Please consult with your RAS analyst to determine the format of this section, as there may be cases where additional sub-headings will provide clarity for readers. There are different ways to use sub-headings to provide the complete picture. For example, sub-headings could be by stakeholder group, using each section or element of a regulation, or based on distributional impacts (e.g., social and cultural, regional, economy, competition, businesses, consumers, and on domestic and international trade (exports and imports), or a combination of the above.

Avoid repeating information, unless it is required to demonstrate the overall justification.

#### Benefits and costs

Every RIAS requires a section on benefits and costs. In order to determine the analytical and transparency requirements needed, departments should refer to the *Policy on Cost-Benefit Analysis*, as well as the [*Canadian Cost-Benefit Analysis Guide: Regulatory Proposals*](http://www.tbs-sct.gc.ca/ri-qr/documents/gl-ld/analys/analys00-eng.asp).

This section should provide the following:

* brief description of methodology, data sources, and key assumptions used for the quantitative analysis of costs and benefits;
* summary description of the quantitative and qualitative costs and benefits by affected stakeholder groups;
* description of distributional impacts on businesses, consumers, the environment, health and safety, competitiveness, trade, and investment;
* discussion of net benefits and sensitivity analysis;
* description of consultations and engagement with stakeholders on the CBA; and
* link to the cost-benefit analysis report or a statement that the cost-benefit analysis is available upon request, with information on how to obtain a copy.

Please note that the baseline scenario should already be explained in the Instrument Choice section.

If costs are not monetized for a low-cost regulatory proposal, departments should state that the costs are expected to be less than $1 million annually and provide a corresponding rationale.

If a regulatory proposal is anticipated to have no cost impacts, departments should state that no costs are expected and provide a corresponding rationale.

##### **Cost-benefit statement**

A cost-benefit statement is required if either costs or benefits have been monetized.

Proposals with significant costs (i.e., >$1M) must always report a cost-benefit statement that summarizes quantitative benefits and costs by affected stakeholders. Please note that the format of this table may be adjusted to suit each proposal, however in all cases, it must include a separate total for monetized costs and benefits, total Present Value (PV) and Annualized average.

Number of years: # (*also state years, e.g.,* 2020 to 2029)

Base year for costing: 20##

Present value base year: 20##

Discount rate: #%

**Monetized costs**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Impacted stakeholder**  | **Description of cost** | **Base year** | **Other relevant years** | **Final year** | **Total (present value)** | **Annualized value** |
| **Government**  | e.g., Administration | $ | $ | $ | $ | $ |
| **Industry**  | e.g., Phase out of existing stock | $ | $ | $ | $ | $ |
| **Industry** | e.g., New equipment | $ | $ | $ | $ | $ |
| **Canadians** | e.g., Higher price for product | $ | $ | $ | $ | $ |
| **All stakeholders** | **Total costs** | **$** | **$** | **$** | **$** | **$** |

**Monetized benefits**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Impacted stakeholder**  | **Description of benefit** | **Base year** | **Other relevant years** | **Final year** | **Total (present value)** | **Annualized value** |
| **Government**  | e.g., Reduced health care costs | $ | $ | $ | $ | $ |
| **Industry**  | e.g., Efficiency | $ | $ | $ | $ | $ |
| **Canadians** | e.g., Air quality | $ | $ | $ | $ | $ |
| **All stakeholders** | **Total benefits** | **$** | **$** | **$** | **$** | **$** |

**Summary of monetized costs and benefits**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Impacts** | **Base year** | **Other relevant years** | **Final year** | **Total (present value)** | **Annualized value** |
| **Total costs** | $ | $ | $ | $ | $ |
| **Total benefits** | $ | $ | $ | $ | $ |
| **NET IMPACT** | **$** | **$** | **$** | **$** | **$** |

**Quantified (non-$) and qualitative impacts (if required)**

Positive impacts *(if required)*

* Positive impact and impacted stakeholder (e.g., 145 fewer fatalities annually in Canada)
* Positive impact and impacted stakeholder

Negative impacts *(if required)*

* Negative impact and impacted stakeholder (e.g., 5 businesses to lose accreditation annually)
* Negative impact and impacted stakeholder

#### Small business lens

This subheading is mandatory in every RIAS. See section 8 of the [Policy on Limiting Regulatory Burden on Business](https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/policy-limiting-regulatory-burden-business.html#toc8) and the [Guide on Limiting Regulatory Burden on Business](http://www.gcpedia.gc.ca/gcwiki/images/0/05/Guide_on_Limiting_Regulatory_Burden_on_Business_EN.docx) for more information.

Regulators are required to analyze and describe the impacts of the regulatory proposal on small businesses. The type of analysis required is determined at the triage stage of the regulatory process and is aligned with the requirements for cost-benefit analysis.

The small business lens section must include:

* a characterization of the anticipated impacts on small business;
* analysis of the compliance and administrative requirements imposed, as well as associated impacts stated in terms that are consistent with the analytical requirements for the assigned triage level;
* details of stakeholder consultations, including changes made as a result of the feedback received from stakeholders; and
* alternative compliance and/or administrative options, as appropriate.

For significant-cost-impact proposals where there are impacts on small businesses, the following table must be used:

Number of small businesses impacted: #

Number of years: # (*also state years, e.g.,* 2020 to 2029)

Base year for costing: 20##

Present value base year: 20##

Discount rate: #%

**Compliance costs**

|  |  |  |
| --- | --- | --- |
| **Activity** | **Annualized value** | **Present value** |
| **Use a new row for each activity, or only a global total if described in narrative)** | $ | $ |
| **Total compliance cost** | **$** | **$** |

**Administrative costs**

|  |  |  |
| --- | --- | --- |
| **Activity** | **Annualized value** | **Present value** |
| **Use a new row for each activity, or only a global total if described in narrative)** | $ | $ |
| **Total administrative cost** | **$** | **$** |

**Total compliance and administrative costs**

|  |  |  |
| --- | --- | --- |
| **Totals** | **Annualized value** | **Present value** |
| **Total cost (all impacted small businesses)** | $ | $ |
| **Cost per impacted small business** | **$** | **$** |

If no small business impacts are anticipated, provide a brief negative statement.

The *Guide to Limiting Regulatory Burden on Business* includes additional guidance on the application of the small business lens, including costing, negative statements and more.

#### One-for-one rule

This subheading is mandatory in every RIAS. If the proposal results in impacts upon the administrative costs incurred by firms, this section will describe the expected increase or decrease in administrative burden in accordance with the *Red Tape Reduction Act* and Regulations. See section 7 of the [Policy on Limiting Regulatory Burden on Business](https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/policy-limiting-regulatory-burden-business.html#toc7) requires the following information:

* an indication of whether the regulatory change introduces new administrative costs on business, thus triggering Element A of the rule, or decreases administrative costs; and
* an indication of whether the regulatory change is a new regulatory title that introduces new administrative costs on business, thus triggering Element B of the rule, or repeals one or more existing regulatory titles.

If either or both elements of the rule are triggered, the one-for-one rule section must include the following information:

* a summary of the calculated administrative costs of burden in or out, and the assumptions associated with the monetization (the completed calculator must also be provided to RAS, and the figures must match those cited in the RIAS);
* a summary of consultations, including the feedback of stakeholders and Canadians on the regulator’s estimates of administrative costs or savings to business, and underlying assumptions; and
* if an exemption is being sought:
* an indication of the category of exemption that applies; and
* a supporting rationale based on the criteria.

If the proposal has no impact on administrative burden costs, a brief negative statement is required.

The [Guide on Limiting Regulatory Burden on Business](http://www.gcpedia.gc.ca/gcwiki/images/0/05/Guide_on_Limiting_Regulatory_Burden_on_Business_EN.docx) includes additional guidance on the application of the rule, including application of the rule, calculation methodology, negative statements, and more.

#### Regulatory cooperation and international obligations

This section is mandatory in every RIAS. The RIAS should always describe regulatory cooperation options considered. This includes an assessment of opportunities to cooperate with other jurisdictions, provincial and/or territorial government, international bodies, and/or participation in existing regulatory cooperation initiatives such as the Canadian Free Trade Agreement – [Regulatory Reconciliation and Cooperation Table](https://www.cfta-alec.ca/regulatory-reconciliation-cooperation/) (RCT), the Comprehensive Economic and Trade Agreement – [Regulatory Cooperation Forum](https://www.canada.ca/en/treasury-board-secretariat/services/regulatory-cooperation/canada-regulatory-cooperation-activities.html#toc2) (RCF), or the Canada – United States [Regulatory Cooperation Council](https://www.canada.ca/en/treasury-board-secretariat/services/regulatory-cooperation/canada-regulatory-cooperation-activities.html#toc3) (RCC).

Regulatory cooperation is a process where governments work together to:

* reduce unnecessary regulatory differences;
* eliminate duplicative requirements and processes;
* harmonize or align regulations;
* share information and experiences; and
* adopt international standards.

Regulatory cooperation applies to a range of regulatory activities, including: policy development; inspections; certification; adoption and development of standards; and product and testing approvals.

If regulatory cooperation is not feasible or desirable, a justification of why the proposal is using an approach specific to Canada must be provided.

This section should also be used to describe the regulatory cooperation and alignment analysis done as part of the proposal beyond a jurisdictional comparison, and to explain what steps (if any) will be taken to achieve alignment.

In cases where partial alignment (for example partial adoption of a standard or regulation from another jurisdiction) has occurred, the explanation must describe which elements and why only some elements were adopted, but not all.

In all cases, whether alignment, partial alignment, or misalignment, a discussion on impacts (positive and/or negative) should be included.

Finally, if the regulation is being developed as part of a coordinated regulatory cooperation arrangement (for example, the RCT, RCF, or RCC) the RIAS must reference the regulatory cooperation forum and work plan item.

If no regulatory cooperation opportunities exist, use this section to explain and justify why.

Please see section 7.2.4 of the [Policy on Regulatory Development](https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/policy-regulatory-development.html#toc7) for additional information.

*Other International Obligations*

Depending on the scope of the proposed regulation and its implementation, different trade agreements or initiatives may impact regulators. For example, a number of FTAs have technical barriers to trade, transparency, good governance, good regulatory practice, or administrative chapters. This is in addition to the requirements of agreements that Canada is a party to through the WTO. This section should outline any other international obligations.

All of Canada’s international trade agreements can be accessed by searching through Global Affairs Canada’s [Trade and Investment Agreements Database](https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/index.aspx?lang=eng) or the [Treaty Law Division](http://www.treaty-accord.gc.ca/index.aspx)

For further information, contact your department’s international trade division.

#### Strategic environmental assessment (SEA)

This section is mandatory in every RIAS. *The* *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals* requires an SEA,if the regulatory proposal were to have the following effect:

* result in important positive or negative environmental impacts; or
* involve a high level of uncertainty or risk regarding the outcomes of the proposal that make it difficult to assess the potential environmental impacts.

If an SEA has been prepared, the RIAS writer should summarize key findings and provide a Web link to the SEA, as appropriate.

If the preliminary scan revealed no significant environmental effects include the following:

In accordance with the*Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, a preliminary scan concluded that a strategic environmental assessment is not required.

#### Gender-based analysis plus

This section is mandatory in every RIAS. Gender-based analysis plus (GBA+) in regulatory analysis is necessary to ensure that regulatory proposals are responsive to and inclusive of diverse groups of Canadians and demonstrate that barriers to full participation of different groups of women, men and gender-diverse individuals are identified and addressed or mitigated in the implementation phase. This requires departments to identify of affected groups and potential impacts, both positive and negative, on equality and inclusion, which results from the implementation of the regulatory proposal, by using relevant gender and intersecting identity criteria.

Include how the regulatory proposal is developed to mitigate or address potential benefits, differential outcomes, or adverse outcomes to Canadians based on factors such as gender, age, education, language, geography, culture and income, etc.

Section 7.2.7 of the Policy on Regulatory Development sets out the requirements for GBA+ when developing regulatory proposals. RAS encourages departments to use the following guidance based on the [GBA+ Appendix developed for financial Treasury Board submissions](https://www.canada.ca/en/treasury-board-secretariat/services/treasury-board-submissions/gender-based-analysis-plus.html) to assist with their assessments:

|  |
| --- |
| **Issue identification** |
| 1. Have you identified a GBA+ consideration within the context of the regulatory proposal?
 |
| 1. What data sources and/or evidence did you consider to support the above conclusion?
 |
| **If a GBA+ issue has been identified, please respond to the following questions:** |
| 1. What response to the GBA+ consideration is being proposed within the context of the regulatory proposal? What is the anticipated impact?
 |
| 1. How will you monitor the performance of the proposed regulation for emerging GBA+ impacts throughout implementation?
 |
| 1. If you plan an evaluation or review of the proposed regulation, will it incorporate the impact of the response to the potential GBA+ consideration?
 |
| 1. Does your proposed response align with GBA+ initiatives being undertaken by other organizations; broader government agenda and priorities; and international and national priorities, norms and statutory requirements?
 |

If the GBA+ assessment does not identify any considerations, departments are required to demonstrate that due diligence was exercised, and should also include the following statement in the RIAS:

No GBA+ impacts have been identified for this proposal.

Additional support, if required, is available from your department’s GBA+ expert or focal point.

Status of Women Canada (SWC), which is the centre of excellence on GBA+ for the federal government, can also provide advice and resources. Its role is to support departments in sustaining the practice of GBA+ and to facilitate the transfer of GBA+ knowledge, provide technical advice, guidance and assistance. SWC has developed a suite of GBA+ tools and information publicly available at the [SWC website](https://cfc-swc.gc.ca/gba-acs/index-en.html) and [internally accessible on GCpedia](http://www.gcpedia.gc.ca/gcwiki/index.php?title=GBA%2B_(Gender-based_Analysis%2B)&redirect=no), including [templates, guides and checklists](http://www.gcpedia.gc.ca/wiki/GBA%2B_%28Gender-based_Analysis%2B%29/Manualsguides).

#### Rationale (if needed)

In some cases, additional rationale may be required that was not covered in the sections above. Sub-headings may be used to pull together the rationale from other analysis to provide a complete picture of the reasoning behind amendments. This is particularly useful for larger or more complex amendments.

Please discuss with your RAS analyst to determine if this section is required and how you are proposing to organize it.

### Implementation, compliance, enforcement and service standards

This section is mandatory in every RIAS. Sub-headings are optional; however, all applicable elements should be covered in this section.

#### Implementation

This section describes the implementation plan for a regulatory action, including any communications or outreach activities, dates for coming into force, partner institutions, or cooperation and coordination activities that will be necessary to ensure effective and efficient implementation. Include links to operational guidance, if applicable.

Indicate if the performance measurement of the regulation will be incorporated into existing performance frameworks and how it will be reported.

#### Compliance and enforcement

Regulations are usually intended to modify the behaviour of individuals to protect or enhance the public interest. It cannot, however, be assumed that all individuals will voluntarily comply, and sanctions may be necessary to encourage compliance. The Directive requires that departments establish compliance and enforcement policies as part of regulatory development. The RIAS should describe these policies and demonstrate that they are warranted by the rationale and objectives set out for the regulatory activity.

This section of the RIAS should address the following:

* explain the mechanism adopted to ensure compliance (including criminal law sanctions, ticketing, prohibition and corrective action orders, inspection, licensing, registration, or other government approval requirements);
* describe means that will be used to detect non-compliance (e.g., inspection or testing); and
* describe the penalties for non-compliance (e.g., fines, imprisonment, and taxes).

It is vital that rules, processes, sanctions, and actions of regulatory authorities be securely founded in law. The RIAS should indicate how regulations will be administered to ensure consistency across regions, how sanctions and penalties will be determined, and that they will be proportionate to the seriousness of the violation.

#### Service standards (if applicable)

This section should also identify the service standard (e.g., timelines for approval processes, such as licensing, permitting, and certification) that is associated with the regulatory activity.

If new or increased fees are being proposed, ensure that the process has been followed for setting service standards in accordance with the [Directive on Charging and Special Financial Authorities](https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32502) and the [*Service Fees Act*](http://laws-lois.justice.gc.ca/eng/acts/S-8.4/).

###  Contact

This section is mandatory in every RIAS. At the end of each RIAS, list the name, address, e-mail, and telephone number of the person (including area codes and fax numbers, if applicable) in the department who is knowledgeable about the proposed regulation and can answer requests for information from the public.

## RIAS for Miscellaneous Amendment Regulations (MARs) and “No Impact” regulations

If the Triage has determined that the proposal is a miscellaneous amendment, or No Impact, the simplified RIAS template can be used. The RIAS cover page should still be signed by the responsible Minister. The MARs RIAS contains the following condensed sections at a minimum:

* Issues and objective
* Description and rationale
* Consultation (if applicable)
* One-for-one rule and small business lens
* Contact

Please discuss with your RAS analyst, as the agreement to use this template will need to be reflected in the triage.

# Supplementary Note

A Supplementary Note is used to inform ministers of confidential (e.g., Cabinet decisions, trade secrets) or sensitive matters (e.g., federal or provincial issues, legal risks) not found in the RIAS. Supplementary Notes can be initiated by the regulatory organization or requested by the RAS analyst. Most regulatory submissions do not require a Supplementary Note.

A Supplementary Note is a Cabinet confidence document and, as such, is not released to the public.

# Communications Plan

All regulatory proposals other than miscellaneous amendment regulations must be accompanied by a communications plan that indicates the following:

* public environment analysis;
* target audience(s) for communication initiatives and anticipated reactions;
* key messages and storyline;
* strategy and tools that will be used to disseminate information;
* proposed budget and evaluation methods; and
* risks involved.

When the strategy involves a minister's announcement, or if the regulatory proposal has high communications risks or is related to a key government priority, PCO-Communications must be contacted by the department (usually the departmental communications section) to review the communications plan.

# Drafting the Regulations

Drafting should occur in parallel with the development of the RIAS.

Discuss drafting with your departmental legal services to begin drafting instructions. Whether you are submitting drafting instructions or draft text, the following documents are also required by the Department of Justice:

* a file opening form (for drafting instructions submitted to the Justice Headquarters Regulations Section)
* a draft Notice of Pre-Publication in both official languages (unless the regulation is seeking exemption from pre-publication);
* a draft RIAS in both official languages;
* a copy of the finalized Triage co-signed by the regulatory organization and RAS; and
* any documentation that may have been exchanged with the Standing Joint Committee for the Scrutiny of Regulations respecting the regulation in question.

These documents may be submitted electronically or in paper form. If submitted in paper form, two copies of each document are required.

You should also advise the Justice Legislative Counsel about any legal issue(s) that may arise from the proposed regulation, inform them of any legal opinions that have been obtained in relation to the issue, inform of any correspondence from the Standing Committee on the Scrutiny of Regulations in relation to the regulations, and refer to the applicable jurisprudence.

Drafting instructions are prepared in both official languages by program officials. It is important to be clear and accurate. The instructions may take various forms, such as:

* a detailed explanation of the policy that is being implemented through the proposed regulation;
* a point-form outline of the proposed regulation;
* a request to include or exclude specific words or concepts in the text; and
* a request to incorporate additional elements into an existing regulation.

When amending existing regulations, the drafting instructions should explain the purpose and expected outcome of the proposed changes. They may also include suggestions on where or how to insert new requirements, should indicate applicable jurisprudence, if any, and note any cross-references made in the regulations.

## Incorporation by Reference

The [*Statutory Instruments Act*](http://laws-lois.justice.gc.ca/eng/acts/S-22) (SIA) was amended in 2015 to provide for the express power to incorporate by reference in regulations. It imposes an obligation on regulation-making authorities to ensure that a document, index, rate or number that is incorporated by reference is accessible. It also provides that a person is not liable to be found guilty of an offence or subjected to an administrative sanction for a contravention relating to a document, index, rate or number that is incorporated by reference unless certain requirements in relation to accessibility are met.

However, it should be noted that the requirements of the SIA do not supersede any broader powers found in specific Acts.

Please see section 7.1.4 of the Policy on Regulatory Development for the policy expectations.

## Examination by the Department of Justice Canada Legislative Counsel and Stamping

Pursuant to subsection 3(2) of the [*Statutory Instruments Act*](http://laws-lois.justice.gc.ca/eng/acts/S-22/page-1.html), the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice (in practice, this responsibility is delegated to the Justice Legislative Counsel) conducts a legal examination of all proposed regulations to ensure the following:

* the regulation is authorized by the enabling act;
* the regulation does not constitute an unusual or unexpected use of the authority under which it is to be made;
* the regulation does not trespass unduly on existing rights and freedoms and is not inconsistent with the Charter of Rights and Freedoms or with the *Constitution Act, 1982*;
* the form and drafting of the regulation is in accordance with established standards; and
* the text is also reviewed by other specialists (revisors, jurilinguists, and bijurists).

Justice examination occurs either:

* after a draft text is submitted by a regulatory organization, in which case Justice will re-draft sections that do not meet accepted standards; or
* while the text is being drafted by Justice.

Once the examination is completed, the Justice Legislative Counsel issues a discussion draft to the department. The discussion draft incorporates any changes that may have been necessary as a result of the legal examination. The regulatory organization then undertakes a final review of the text and confirms that it reflects the relevant policy.

## Request for Stamped Copies

A written request (letter or email) for stamped copies of a regulation should be sent to the Justice Legislative Counsel by the manager responsible for the regulatory proposal after concurrence and approval by the departmental legal services unit. This stamp indicates that the proposed regulation has been examined in accordance with the [*Statutory Instruments Act*](http://laws-lois.justice.gc.ca/eng/acts/S-22/page-1.html). If there is any outstanding matter that represents a high legal risk, the Deputy Minister of Justice will advise the Clerk of the Privy Council, in writing, in accordance with the Clerk of the Privy Council's obligations under section 3 of the [*Statutory Instruments Act*](http://laws-lois.justice.gc.ca/eng/acts/S-22/page-1.html). The Clerk will then advise the regulatory organization accordingly.

# Submitting and Scheduling Proposals for Governor in Council Approval

## Signed Submission goes to the Privy Council Office, Orders in Council Division (PCO-OIC)

Regulatory proposals, once approved for submission by the sponsoring minister, are forwarded to PCO-OIC, which is responsible for putting the proposal before the Treasury Board.

PCO-OIC reviews the submission to ensure completeness, forwards a copy to TBS-RAS, prepares the agenda, ensures the legality of the draft OIC by requesting its final review by the DOJ Legislative Counsel, and distributes the proposal to Treasury Board members and other select high-level officials.

The submission checklist identifies the documents that are to be sent to the Assistant Clerk of the Privy Council.

### Submission Checklist - Governor in Council Approval

|  |  |  |
| --- | --- | --- |
| **PACKAGES** | **PRE-PUBLICATION** | **FINAL APPROVAL**  |
| **For publication in CG** | **For publication in CG (Regulation)** |
| **A** | **Originals** | Letter of Transmittal (E or F)\* | Letter of Transmittal (E or F) |
|   | Ministerial Recommendation, signed (E/F) |
| Notice and Regulation (E/F) *colour print* | Order and Regulation (E/F) (SOR) *colour print* |
| RIAS (Cover Page signed by Minister) (E/F) | RIAS (Cover Page signed by Minister) (E/F) |
| Communications plan (E/F) (mandatory for SOR, optional for MARs) | Communications plan (E/F) (mandatory for SOR, optional for MARs) |
| If applicable: Supplementary Note (E/F)  | If applicable: - Supplementary Note (E/F)- One-for-one rule template (E or F)- Small business lens (E/F) |
| **B** | **Photocopies** | 2 photocopies of Package A (E/F) | 2 photocopies of Package A (E/F) |
| 1 photocopy of Package A (E) | 1 photocopy of Package A (E) |
|   |   |
| **USB or CD** | All submissions must include an electronic version of **all the documents in the package** and should be submitted in**:**- **PDF format** forsigned documents (scanned with signatures), agreements, **and** *blue-stamped pages*;- **MS Office format** for all other documents (RIAS, Explanatory Note, Supplementary Note, Communications Plan, Draft Order, Schedules), **including** *blue-stamped pages*. |
| **C** | **Gazette**  | Request for insertion in *Canada Gazette*, signed | Request for insertion in *Canada Gazette*, signed  |
| 1 photocopy of Letter of Transmittal | 1 photocopy of Letter of Transmittal |
| 2 photocopies of Notice and Regulation | 2 photocopies of Order and Regulation |
| 2 photocopies of RIAS | 2 photocopies of RIAS |
|   | 2 photocopies of small business lens |

**Note:**

**No stapled** documents

**No back-to-back/double-sided** pages

**No colour photocopies** of any documents, ***except*** geographical maps

**Number all** document pages (RIAS, Explanatory Note, Supplementary Note, and Communications Plan) *Note:* English and French documents should be numbered as separate/independent documents

## Scheduling a Regulatory Proposal for Consideration

A regulatory submission must be received by PCO-OIC a minimum of 17 working days prior to the Treasury Board meeting at which the proposal may be scheduled for consideration. Proposals will be scheduled for consideration by the Treasury Board at the discretion of the President.

Proposals received after the deadline will be placed on the agenda for a subsequent Treasury Board meeting. To be considered, proposals must be complete and comply with the analytical requirements of the directive. The expected schedule, along with submission deadlines is distributed at the beginning of each Parliamentary session. Meetings may be added, moved or cancelled at the President’s discretion.

RAS may advise when an item is scheduled in order to allow the department to prepare their communications material.

### Urgent Consideration

Requests for urgent consideration of proposals received after the deadline require a letter from the sponsoring minister to the President of the Treasury Board justifying the urgency. In addition, the sponsoring minister’s office must contact the Office of the President of the Treasury Board to discuss the proposal, indicating the reason for urgency, including why the department was not able to meet the submission deadline.

Before submitting such a letter, please consult with your RAS analyst, who can provide guidance on the drafting of the letter. In the letter of urgent consideration, it is not appropriate to request a specific date for consideration by the GIC, as this could reduce flexibility in planning for its inclusion on the agenda (e.g. if there is no TB meeting on the date specified or the meeting date has changed). However, it is appropriate to indicate time sensitive elements that need to be taken into consideration by the President and TB members (e.g. coming into force date of the Act).

When finalized, the letter (signed by the minister) should be included as part of the regulatory submission or, if the submission has already been sent, the letter should be delivered to the attention of the Assistant Clerk of the Privy Council (OIC) by a departmental official, by secure messenger.

Consistent with established Treasury Board practice, and as is the case with all proposals scheduled for consideration, the consideration of urgent proposals will be at the discretion of the President.

## Templates

### [Request for Insertion in the *Canada Gazette* (PDF Document - 161 KB)](http://www.gazette.gc.ca/pi-ip/fif-eng.pdf)

### Ministerial Recommendation

|  |
| --- |
| ***Ministerial RecommendationRecommandation ministérielle******Title of the Regulations in bold and italicTitre du Règlement en caractère gras et italique*** |
| To Her Excellency the Governor General in Council:The undersigned has the honour to recommend that Your Excellency in Council, pursuant to subsection (*insert relevant subsection*) and section *(insert relevant section)* of the *(insert relevant Act here),* make the annexed *(insert name of Regulations)*. |  | À Son Excellence la gouverneure générale en conseil :Le soussigné a l’honneur de recommander que, en vertu du paragraphe (*insérer le paragraphe applicable*) et de l’article (*insérer l’article applicable*) de la *Loi* (*insérer la loi applicable*), Votre Excellence en conseil prenne le *Règlement* (*insérer le nom du règlement*),ci-après. |
| Respectfully submitted, |  | Respectueusement soumis, |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Minister of (*insert department or agency name*)Ministre de (*insérer le nom du ministère ou de l’organisme*) |

### Transmittal to the Assistant Clerk of the Privy Council

**BY HAND**

 [Date]

Assistant Clerk of the Privy Council
Orders in Council Division, Privy Council Office
Room 811, Thomas D'Arcy McGee Building
90 Sparks Street

c/o 11 Metcalfe Street (Mailroom)
Ottawa ON K1A 0A3

Dear [Assistant Clerk]:

Enclosed please find, in both official languages, a recommendation by the Minister of (title) seeking Governor in Council approval for [name of Regulations or Order].

I am requesting that the proposed Order in Council be submitted for consideration and approval at the next available meeting of the Treasury Board.

(if applicable)This proposal contains no financial implications requiring Treasury Board Part A approval. OR This proposal is related to a Treasury Board submission requiring Part A approval. OR This proposal contains financial implications and the Treasury Board gave its approval on (date).

(if applicable)This agreement enters into force on (date). It is therefore imperative that this submission be considered prior to that date. Any communication implications, for example a signing ceremony of an Agreement, Treaty, etc., are scheduled to take place in (location) on (date).

We have no concerns with the Privy Council Office, Order in Council Division posting the Order on its website on the third day following approval. (Include any special requirements for registration or publishing in the *Canada Gazette*.)

(if applicable)A letter of concurrence from (title) is enclosed OR will follow under separate cover.

Should you have any questions, please contact (name and title), who can be reached at xxx-xxx-xxxx (telephone, e-mail, pin) or, for administrative matters, (name) at (telephone).

 Yours truly,

 Name, Title

Attachments

# Treasury Board Meeting and Decision

RAS is responsible for briefing Treasury Board ministers on regulatory proposals.

While the time, place and agenda of the meeting is Cabinet confidence, RAS may advise when an item is scheduled in order to allow the department to prepare their communications material. The date of consideration should not be shared to external stakeholders.

The Treasury Board, as a Cabinet committee, may make any of the following decisions:

* approve or reject pre-publication of the proposed regulation (including approve a pre-publication period other than what was originally proposed);
* approve or reject requests for exemptions from pre-publication;
* send the item to Cabinet or one of its other committees for consideration;
* refer the matter back to the responsible minister for further consideration and information;
* defer the item to another meeting; and
* make decisions related to the one-for-one rule.

Approved submissions are sent to PCO for action. Departments will be informed by the RAS analyst of any follow-up actions that may be needed, refusals of regulatory proposals by the Treasury Board, or proposals that are deferred.

For items considered for pre-publication, RAS may inform departments immediately following the meeting.

For final approval, departments will only be informed once the Governor General signs the Order in Council attached to the regulation.

# Registering, Coming into Force, Publishing in *Canada Gazette*, and Distributing Regulations

## Registration

Section 5 of the [*Statutory Instruments Act*](http://laws-lois.justice.gc.ca/eng/acts/S-22/page-1.html) requires that a regulation be transmitted to the Clerk for registration within seven days of the regulation being made. In practice, registration is usually done within 48 hours of the Governor Generals signature.

To register a regulation, PCO-OIC records the title of the regulation, the title of the regulatory organization making the regulation, the legislative or other provision under which it is made, the date it is made, and the date of registration. The regulation is also assigned a number, preceded by the acronym SOR, which stands for statutory orders and regulations, or SI, which stands for statutory instruments.

Certain classes of regulations may be exempted from registration under section 7 of the [*Statutory Instruments Regulations*](http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.%2C_c._1509/). Your Justice legislative counsel can advise you on this matter, and your RAS analyst should also be consulted.

## Coming into Force

Regulations that must be registered generally come into force at midnight on the date of registration provided for in section 6 of the [*Statutory Instruments Act*](http://laws-lois.justice.gc.ca/eng/acts/S-22/page-1.html) or on a day after registration that is specified in the regulations.

However, a regulation may come into force on a day that is up to seven days before its registration (but not earlier than the day it is made) if the day of coming into force is specified in the regulation and the reasons it is not practical to come into force on registration are provided to the Clerk of the Privy Council.

A regulation can take effect before it is made (i.e., be retroactive) only if the enabling act clearly authorizes the retroactivity and the text of the regulation specifies the date.

In all cases, the Government's decision to make a regulation must **not** be publicly announced until the OIC has been signed by the Governor General. Departmental communications advisors should also be consulted on any ministerial announcements related to the regulations and coordinate with PCO.

## Publication in the *Canada Gazette*

If the approval of the Treasury Board is obtained, PCO-OIC forwards the proposed regulation and the accompanying RIAS to the Canada Gazette Directorate of Public Service and Procurement Canada.

### Pre-publication

The requirement to pre-publish regulatory proposals in the *Canada Gazette*, Part I, is intended to promote transparency by offering Canadians a final comment period before regulations are considered by Treasury Board ministers. In some cases, enabling legislation may stipulate a requirement for pre-publication, and in others, a minimum pre-publication period may be identified.

The standard pre-publication period is 30 days. In some cases, it may be advisable or required to increase the pre-publication period to allow more time for stakeholders to review complex regulations. Departments should determine at the Triage stage whether their regulatory proposal is affected by an international trade agreement to which Canada is a party. For proposals that may have an impact on international trade, the Directive requires a minimum comment period of 70 days for consultations ([see below](#_International_Obligations_and)). While Departments may indicate their requested pre-publication period, the agreed to period may be adjusted following discussions with RAS Analysts.

Pre-publication is not a replacement for prior consultation. Affected stakeholders should have been consulted on the development of a regulatory proposal prior to pre-publication. Pre-publication is an opportunity for stakeholders to review the draft regulatory text, provide comments on the structure and readability of the requirements and to identify any drafting issues that may inadvertently affect the implementation of the proposal. Pre-publication can generally be thought of as providing an opportunity to review the technical instructions (i.e., regulatory text) that outline the policy that was consulted upon. Pre-publication also provides an opportunity for stakeholders to review and comment on the assumptions and analysis in the RIAS.

#### International Obligations and Notifications

Canada is a party to several World Trade Organization (WTO) agreements as well as multiple free trade agreements (FTAs), including bilateral agreements, and multilateral agreements.

According to the [WTO Agreement on Technical Barriers to Trade](https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm#articleX) and the recommended transparency for [technical barriers to trade (TBT](https://www.wto.org/english/tratop_e/tbt_e/tbt_transparency_toolkit_e.htm)) and [sanitary and phytosanitary (SPS](https://www.wto.org/english/tratop_e/sps_e/transparency_toolkit_e.htm)) measures. Members must provide notification whenever a relevant international standard or guide or recommendation does not exist, or the technical content of a proposed or adopted technical regulation or procedure is not in accordance with a relevant international standard or guide of recommendation and the Regulations are expected to have a significant effect on trade of other Members. The purpose of this process is to allow stakeholders in countries with whom we have a trading relationship the opportunity to comment on a Canadian regulation that may have an impact on them.

Global Affairs Canada has established the Canadian Enquiry Point to ensure that Canada meets all international obligations on transparency and notification requirements through the TBT and SPS agreements. The Enquiry Point works with regulators to create notifications that are distributed to the WTO and to all FTA partners during the regulatory process.

It should be noted that pre-publication is not the only way to meet the notification requirements of the WTO, and that departments may be able to notify through the Enquiry Point during other consultation stages. For notifications outside of *Canada Gazette*, Part I publication, regulators must prepare the notification in both official languages and send to the Enquiry Point. Enquiry Point officers will review the notifications and distribute accordingly.

For additional information please contact:

Canada's SPS & TBT Notification Authority and Enquiry Point

Global Affairs Canada

Technical Barriers and Regulations Division (TPB)

111 Sussex Drive, Ottawa, ON K1A 0G2

Canada

Telephone: (343) 203-4273

Fax: (613) 943-0346

E-mail: enquirypoint@international.gc.ca

#### Exemption from pre-publication

There are circumstances under which proposed regulations may be exempted from pre-publication. Examples include (but are not limited to) the following:

* Regulations that are exempted from publication pursuant to section 15 of the [Statutory Instruments Regulations](http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.%2C_c._1509/) are also exempt from pre-publication;
* Regulations that respond to emergencies that pose major risks to health, safety, the environment, or security;
* Sensitive regulations for which pre-publication would cause demonstrable adverse effects or undermine the intent of the regulations, such as those affecting subsidy changes and interest rate changes;
* Miscellaneous amendment regulations, such as renumbering, bringing corrections to ensure consistency between English and French versions, or bringing corrections of grammatical or typographical errors; and
* Repetitive regulations that are regularly duplicated in the same form (e.g., the Energy Supply Allocation Board Regulations, which must be amended every two years to name board members).

The rationale for requesting an exemption from pre-publication must be included in the Triage. RAS advises departments on the appropriateness of a proposed exemption from pre-publication and makes a recommendation to Treasury Board ministers. Treasury Board ministers consider requests for exemptions on a case-by-case basis, and make the final decision.

Any request for exemption from pre-publication should be discussed with the RAS analyst prior to completing the Triage. Department of Justice Legislative Counsel will only stamp the regulation for Part II of the *Canada Gazette* once RAS confirms in writing support for an exemption from pre-publication recommendation. Exemption from pre-publication is not feasible if there is a statutory requirement to pre-publish.

### Final approval

Section 11 of the [Statutory Instrument Regulations](http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.%2C_c._1509/) requires that most regulations be published in the *Canada Gazette*, Part II, within 23 days of their registration (Part II is published every second Wednesday). PCO-OIC coordinates this process. As in the case with pre-publication, an extra edition of the *Canada Gazette*, Part II can be published on an exceptional basis, such as to enable a regulation to be published and enforced in advance of the normal publication schedule to meet an urgent need.

Failure to publish a regulation does not make it invalid but does prevent the punishment of contraventions of the regulation. This is because the constitutional principle of the rule of law requires that the terms of a law must be knowable.

There are two exceptions to this general rule. A person or organization contravening an unpublished regulation can be punished if the regulation is exempt from publication or if the regulation expressly provides that it applies before it is published in the *Canada Gazette*, Part II. In such cases, however, it must be proved that reasonable steps were taken to bring the substance of the regulation to the notice of those likely to be affected by it.

## Distribution

Signed copies of an Order in Council are normally mailed to the sponsoring minister and to the deputy minister or agency head within five days of signature.

Usually, OICs, including those making regulations, are made publicly available three working days after approval by the Governor General. They can be found on the PCO website at the [Orders in Council Database](http://www.pco-bcp.gc.ca/oic-ddc.asp?lang=eng).

# Review by the Standing Joint Committee for the Scrutiny of Regulations

The mandate of the Standing Joint Committee for the Scrutiny of Regulations is defined by the [Statutory Instruments Act](http://laws-lois.justice.gc.ca/eng/acts/S-22/page-1.html), the [Legislation Revision and Consolidation Act](http://laws-lois.justice.gc.ca/eng/acts/S-20/FullText.html), and the Standing Orders of the House of Commons (the permanent written rules under which the House of Commons regulates its proceedings). Pursuant to the [Statutory Instruments Act](http://laws-lois.justice.gc.ca/eng/acts/S-22/page-1.html), the Committee can scrutinize any statutory instrument made on or after December 31, 1971.

Composed of eight senators and a proportionate number of members of the House of Commons, the Committee has the same powers that other standing committees have. It may sit while the House is sitting and when the House stands adjourned; send for persons, papers and records; print papers and evidence; and delegate to a subcommittee all or any of its powers (except the power to report directly to the House). It may also table reports in the House and request government responses to them. In addition, the Committee has the power to initiate the revocation of a regulation.

The Committee reviews all statutory instruments referred to it on the basis of [13 criteria](http://www2.parl.gc.ca/MarleauMontpetit/DocumentViewer.aspx?DocId=1001&Sec=Ch17&Seq=3&Lang=E#fnB29), such as conformity with the Canadian Charter of Rights and Freedoms or the Canadian Bill of Rights; compliance with the [Statutory Instruments Act](http://laws-lois.justice.gc.ca/eng/acts/S-22/page-1.html) with respect to transmission, registration, or publication; and unusual or unexpected use of the powers conferred by the enabling legislation.

More information on the Standing Joint Committee for the Scrutiny of Regulation is available in section 17 of the [House of Commons Procedure and Practice Online](http://www2.parl.gc.ca/MarleauMontpetit/DocumentViewer.aspx?Sec=Ch17&Seq=4&Lang=E&Print=2).

1. Throughout this document, “departments” denotes all federal regulatory organizations to which the Cabinet Directive on Regulation applies. [↑](#footnote-ref-1)